

**DURHAM, NORTH CAROLINA
MONDAY, OCTOBER 2, 2006
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Absent: None.

Also present: City Manager Patrick Baker, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the Pledge of Allegiance led by Council Member Clement.

Mayor Bell read the following proclamations: National Arts and Humanities Month presented to Sherry DeVries; Disability Awareness Month presented to Sarah Hogan; Domestic Violence Awareness Month presented to Beth Froehling and Aurelia Sands Bell.

Council Member Brown made comments on a recent article in THE NEWS & OBSERVER honoring Mayor Bell for his fashion standards.

Council Member Catotti extended birthday wishes to Mayor Pro Tempore Cole-McFadden who will be celebrating her birthday tomorrow.

City Council Members made comments on the following events attended/special recognition: Georges Rousse Durham project; Recovery Block Party; Troop 451; and Downtown Durham, Inc. Annual Meeting.

Council Member Catotti reminded everyone to attend events planned for Minority Business Enterprise Week.

City Council Members made comments on the following events attended/special recognitions: Campaign for Decent Housing Panel Discussion/Tour; Walltown Annual Community Day; Teer Family gift to the Museum of Life and Science; NCCU JAZZ station ribbon cutting; Domestic Violence Awareness Month; and NBA team owner Blue Devil Venture.

Council Member Clement announced Mayor Bell received the Visionary of the Year Award by Downtown Durham, Inc. for his support of downtown initiatives.

City Council Members made comments on the following events attended/special recognitions: Durham Affordable Housing Coalition; and West Minister Presbyterian Church Dinner.

Council Member Clement asked staff to provide an explanation regarding THE NEWS & OBSERVER article: Durham Recognizes Bankrupt firms.

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Council Member Stith made comments on the revolving door of problems in Durham and called for an independent audit of City services.

City Council Members and the Mayor made comments on the following events attended/special recognitions: Hillside High School Parade, Christian McCauley—Miss Hillside, Teen Scene, Triangle United Way Annual Harvest Fest, South West Elementary School 3rd graders; and Northgate Shopping Center –Annual College Fair.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk.

City Manager Baker requested that Consent #12 [Water Extension Agreement – USB Realty Investors, LLC] be referred to the October 16, 2006 City Council Meeting. He recognized Deputy City Manager Wanda Page to address issues regarding the Dollar Wise Week proclamation. Deputy City Manager Page read the following memo for the record:

Date: October 2, 2006

To: Mayor Bell and City Council Members
From: Patrick W. Baker, City Manager
Subject: Dollar Wi\$e Week Proclamation and Press Release

A recent news article raised questions about the City's involvement in National Dollar Wi\$e Week. Specifically, I have been asked to respond to the following questions:

1. How was Durham Regional Financial Center selected to receive the Proclamation?
2. Why was the organization highlighted in the press release?
3. What is the basis for the organization to use City Hall to provide financial education classes?

The organization was chosen to receive the Proclamation because they provide citizens with financial education consistent with the purpose of National Dollar Wi\$e Week; also the organization had previously received the Proclamation the past two years.

Dollar Wi\$e Week is a recognition by the U.S. Conference of Mayors Council for the New American City that financial illiteracy is a national problem that needs to be addressed through the education of citizens about financial literacy. Each year, mayors across the nation proclaim a week in September as Dollar Wi\$e Week a part of the National Dollar Wi\$e Campaign: Financial Education for America. The City of Durham is a member of the Mayor's National Dollar Wi\$e Campaign and has been a member since its inception in 2004. As a member, the City of Durham has annually recognized Dollar Wi\$e Week through a proclamation issued by the Mayor.

In 2002, prior to the inception of the National Dollar Wise campaign by the U.S. Conference of Mayors, several local nonprofits, pro-consumer groups, banks, credit unions, corporate and government organizations formed the Money Wi\$e Durham Coalition. One of the nonprofit members of the Coalition, the Durham Regional Financial Center served and continues to serve as the Coalition's coordinator. The Coalition has had several accomplishments including but not limited to connecting Durham County families to the EITC (Earned Income Tax Credit), free tax

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preparation, and low to no cost bank accounts. The Coalition also implemented direct deposit for child day care providers and provided financial literacy education.

In 2004, the U.S. Conference of Mayors initiated the National Dollar Wi\$e Campaign. Because the Money Wi\$e Durham Coalition was already conducting many of the activities associated with the national program it was decided to recognize both programs simultaneously. It was appropriate to recognize the Money Wi\$e Durham Coalition's work at the time the Mayor issued the Money Wi\$e Week and National Dollar Wi\$e Week Proclamation. On behalf of the Money Wi\$e Durham Coalition, the Coalition's coordinator accepted the Proclamation at the October 4, 2004 City Council Meeting. The press released advised persons to contact the Money Wi\$e coordinator for additional information. The coordinator was located in the Durham Regional Financial Center offices and the contact telephone number was to that office. In support of the Coalition's initiative, the City granted in-kind training space at City Hall in order to deliver financial literacy and homebuyer education training. This support began in November 2004 and continues through today. The trainings offered at City Hall are part of the City's commitment to help the citizens of Durham increase financial literacy and homeownership. The space is centrally located and easily accessible for the citizens who come from all areas of Durham.

The Coalition applied for Durham City non-city agency funding in the spring of 2005 and received \$5,000.00 for FY '05-'06 to promote financial literacy, provide access to financial services and wealth building opportunities throughout the Durham community. The City contracted with Durham Regional Financial Center on behalf of the Coalition. Again, on behalf of the Coalition, the Coalition's coordinator, received the National Dollar Wi\$e Week proclamation at the September 19, 2005 City Council Meeting. As you may recall from that meeting, class participants came from their class in the basement of City Hall to the Council Chamber to be recognized and witness the coordinator receive the Proclamation in support of National Dollar Wi\$e Week. For further contact information, the press release identified the Money Wi\$e hotline telephone number which is answered at the Durham Regional Financial Center offices.

Although the Coalition applied but didn't receive funding for FY '06-'07, the Durham Regional Financial Center, as the coordinating organization, is continuing to provide classes. In FY '06, 300 persons received financial literacy and homebuyer education training in City Hall. The classes are free of charge to citizens and are conducted in the evenings.

In September 2006, since the Durham Regional Financial Center was still the Coalition's coordinating organization, they were again asked to accept the proclamation. Again, they were continuing to meet the objectives of both the Money Wi\$e Durham Coalition and the Mayors' National Dollar Wi\$e Week. As in the past two years, press releases listed the Durham Regional Financial Center as the contact organization along with other member organizations and supporters of National Dollar Wi\$e Week.

Council Member Clement requested that this item be added to the October 5, 2006 Work Session agenda.

Council Member Stith asked staff to provide at the October 5, 2006 Work Session what mechanism would be put in place to scrutinize organizations [profit/non-profit] that are doing business with the City or having relationships with the City so that the City is not in this position again.

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Council Member Brown asked staff what's next regarding the relationship with Durham Regional Financial Center—should relationship be severed; is the City using this group to give financial advice, are they still on the payroll and for what amount; how did this organization receive \$600,000 through Congressman Price's Office and what other groups can be substituted for this organization; and lastly made a recommendation that the City take a look at using Good Works.

City Manager Baker gave a status report on the yard waste facility fire and informed Council that another report will be made available at the October 5, 2006 Work Session. He reported that the fire was completely extinguished within five to six days and thanked everyone involved for their assistance. He informed Council that the City is continuing to serve customers by using the site to consolidate daily yard waste collection material, and that materials are grinded on-site and transferred within 24 hours to larger trucks to be disposed of at a permanent permitted off-site facility, there is an engagement with an outside engineering firm to assist in addressing site plan and general compliance issues requested by DENR and the City will have a completed permit application submitted to the State within seven to ten days in which the State will expedite review of that permit and the City should have a permitted site as quickly as possible.

In addition, City Manager Baker stated he would be personally investigating this fire to determine what happened at the yard waste facility and will provide an update at the Special City Council meeting on Thursday. He responded to comments left out in the NEWS & OBSERVER article, reported executive updates that document department activities are in no way to serve as a primary means for a department to raise issues just status reports outlining what's going on, but if there is a crisis or major problem with a department, these updates are no substitute for a telephone call or face-to-face meeting. He discussed the process noting that all the departments are divided into three groups directly supervised by the City Manager, Deputy City Manager Voorhees and Deputy City Manager Page. There are weekly meetings with Department Heads although some of his departments meet bi-weekly to discuss specific issues. He stated these management updates are not the means for communicating big or crisis items and addressed questions raised in the article that he is not telling the truth, was not aware that the yard waste facility permit was expired, and that he nor Deputy City Voorhees did nothing to provide needed equipment for the Solid Waste Management and ignored the items brought to the attention through these management updates. He made comments on the support for the department and referenced that in budgets 06 and 07 there was a recommendation and Council approved funding requests for Solid Waste Management to equip and staff the yard waste facility, to begin self-management of facility and maintain the facility. Also, he provided documentation to Council from FY 06 and 07 budget presentations requesting equipment for the handling and maintenance of the yard waste facility in which Council approved expenditures. In response to a request from the Department for a track loader, Mr. Voorhees rented a track loader for January and February and made arrangements to borrow equipment from the Public Works Department to allow Solid Waste Management to meet the needs they had mentioned in a December 31st correspondence. In April, Solid Waste Management noted during the budget process their need to have its own track loader to be included in budget.

City Manager Baker commented on the 10-year Solid Waste Plan Update presentation [page 18] that was discussed May 19, 2006 indicating that the City had a permit. He noted CLM

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Environmental who had a three-year contract to grind debris with the City experienced some operation difficulties shortly after being hired and may be now out of business or in bankruptcy. Due to operational issues, CLM was not able to keep up with the need to grind existing yard waste debris piles at a pace satisfactory to the City staff. In an attempt to get the material grinded at a satisfactory pace and pursuant to the terms of the contract, staff began negotiations to have the contract assigned from CLM to King Martin which came on board to grind material. He noted the Vice President of CLM advised the City on August 14 of their agreement to sign a contract and contract assignment to King & Martin was executed August 27, 2006. A contract was prepared by staff on September 8, 2006 and executed in his absence on September 12 and the fire occurred on September 10. City Manager Baker noted that he will provide Council with a cost estimate on Thursday.

Mayor Bell noted he is requesting specific answers to the questions he raised concerning this particular item.

It was indicated that the item concerning Triangle Success will be discussed on Thursday.

Council Member Stith asked staff to address if someone knew about this issue.

Council Member Brown suggested that Council receive two other documents that Mr. Voorhees had shared with him and requested that Council receive Executive Updates before Thursday's meeting.

Council Member Clement requested staff to report on Thursday who knew what, when, where, how and what time.

MOTION by Council Member Clement seconded by Council Member Woodard to accept the City Manager's priority items was approved at 8:22 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

There were no priority items from the City Attorney and City Clerk.

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Item 21[Amendment to the City of Durham Employment and Training 2006-08 Grant Project Ordinance #13273] was pulled.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to approve the Consent Agenda as amended was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

[CONSENT AGENDA]

**SUBJECT: NON-CITY AGENCY PROGRAM SPECIFIC COMPLIANCE
EVALUATIONS (JUNE 2006)**

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MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to receive and accept the report for the Non-City Agency Program Specific Compliance Evaluations (June 2006) as presented and approved at the August 28, 2006 meeting of the Audit Services Oversight Committee was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to approve City Council minutes for the September 5, 2006 Regular City Council Meeting; and

To approve City Council action taken at the August 24, 2006 City Council Work Session was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: DURHAM CITY-COUNTY ENVIRONMENTAL AFFAIRS BOARD – APPOINTMENT

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to appoint Kevin Taylor to fill one (1) vacancy representing Energy on the Durham City-County Environmental Affairs Board with a term expiring on June 1, 2009 was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: STREET CLOSING (SC06-03) – SET PUBLIC HEARING ON THE CLOSING OF 212.34 LINEAR FEET OF CAMERON PLACE

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to adopt a resolution to set a public hearing on the proposed closing of Cameron Place for November 6, 2006 was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9398

SUBJECT: MAJOR SITE PLAN AND PRELIMINARY PLAT – ASHTON HALL SUBDIVISION AND AMENITY CENTER (D05-789)

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MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to approve a major site plan and preliminary plat for "Ashton Hall Subdivision and Amenity Center," submitted by Chas. H. Sells, Inc., on behalf of McCar Homes, for 330 single family residential lots, a 3,000 square foot clubhouse, pool, tennis courts, and 34 parking spaces on a 134.046 acre site zoned PDR 2.72 and F/J-B; the property is located north of Sherron Road, east of Mineral Springs Road, and north of US 70. PIN 0840-03-92-8811, 0850-03-04-4043, 7617, 9764, 0840-04-93-5369, 0850-01-05-6336, 0850-01-25-0300, 0850-01-15-4014, 0850-03-03-4394, 0850-03-02-5777, 3445 was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: MAJOR SITE PLAN – SPRING HILL COMMERCIAL (D06-349)

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to approve a major site plan for "Spring Hill Commercial," submitted by Horvath Associates, PA, on behalf of Ticon, Inc., to construct a 4,300 square foot commercial building on 0.210 acres, zoned PDR 9.400 and F/J-B--the site is located at the southeast corner of Highgate Drive and NC 54, PIN 0718-02-66-2618 was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: STREET ACCEPTANCES - STILLWOOD - CHANCELLORS RIDGE – PH 2B, 2C, 3

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to accept the streets listed for maintenance by the City of Durham was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Stillwood

- 1) **Vestavia Drive** – from the south curb line of Carpenter Road to the centerline of Mountain Brook Circle (695') and
- 2) **Mountain Brook Circle** – from the centerline of Vestavia Drive east then south thru the cul-de-sac (1,510') and
- 3) **Mountain Brook Circle** – from the centerline of Vestavia Drive west and around to the c/l of Mountain Brook Drive (1,411'.)

Chancellors Ridge – PH 2B, 2C, 3

- 1) **Academia Court** – from the centerline of Chancellors Ridge Drive south thru the cul-de-sac (596') and

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- 2) **Senior Avenue** – from the centerline of Professor Place north to the centerline of Sophomore Court (334') and
- 3) **Sophomore Court** – from the centerline of Senior Avenue east thru the cul-de-sac (377') and
- 4) **Sophomore Court** - from the centerline of Senior Avenue west thru the cul-de-sac (368') and
- 5) **Intern Way** – from the centerline of Higher Learning Drive southeast then southwest around the circle and back to Intern Way (691') and
- 6) **Intern Way** – from the centerline of Higher Learning Drive northwest thru the cul-de-sac (424') and
- 7) **Student Place** - from the east curb line of NC Hwy 751 east to the centerline of Intern Way (364') and
- 8) **Higher Learning Drive** – from the east curb line of NC Hwy 751 east to the centerline of Intern Way (364'.)

SUBJECT: WATER AND SEWER EXTENSION AGREEMENT WITH WORMAN DEVELOPMENT, LLC - OAK HILL SUBDIVISION

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Water & Sewer Extension Agreement with Worman Development, LLC to serve Oak Hill Subdivision was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: WATER AND SEWER EXTENSION AGREEMENT WITH OREGON, LLC - UPCHURCH PROPERTY

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Water & Sewer Extension Agreement with Oregon, LLC to serve UpChurch Property was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: WATER AND SEWER EXTENSION AGREEMENT WITH NEIGHBORHOOD DEVELOPMENT ASSOCIATES, LLC - BARBEE CHAPEL ROAD ASSEMBLAGE

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MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Water & Sewer Extension Agreement with Neighborhood Development Associates, LLC to serve Barbee Chapel Road Assemblage was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: WATER AND SEWER EXTENSION AGREEMENT WITH BRYANT B. ROBERTS, INDIVIDUAL - BUNGALOW AVENUE

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Water & Sewer Extension Agreement with Bryant B. Roberts, Individual, to serve Bungalow Avenue was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: WATER EXTENSION AGREEMENT WITH UBS REALTY INVESTORS, LLC - 5205 BARBEE CHAPEL ROAD

To authorize the City Manager to enter into a Water Extension Agreement with UBS Realty Investors, LLC to serve 5205 Barbee Chapel Road.

Note: At the request of the Manager, this item was deferred to the October 16, 2006 City Council Meeting.

SUBJECT: WATER AND SEWER EXTENSION AGREEMENT WITH BEAZER HOMES, INC. - FARRINGTON ROAD TOWNHOMES

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Water & Sewer Extension Agreement with Beazer Homes, Inc. to serve Farrington Road Townhomes was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: REVISED GENERAL CAPITAL IMPROVEMENT PROJECT ORDINANCE FY 2006-07

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to adopt an Ordinance Amending the General Capital Project Ordinance, Fiscal Year 2006-07, as amended, the same being Ordinance #13271 was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

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Ordinance #13315

**SUBJECT: CAPITAL PROGRAM ADVISORY COMMITTEE QUARTERLY
REPORT**

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to receive the Capital Program Advisory Committee's first quarterly report was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

**SUBJECT: WORKFORCE INVESTMENT ACT YOUTH SERVICES CONTRACT
WITH DURHAM LITERACY CENTER**

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract with the Durham Literacy Center in the amount of \$51,443.49; and

To authorize the City Manager to make changes as may be needed as long as they do not increase the dollar amount of the contract nor alter the completion date of the contract was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

**SUBJECT: WORKFORCE INVESTMENT ACT YOUTH CONTRACT WITH THE
ACHIEVEMENT ACADEMY OF DURHAM**

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract with The Achievement Academy of Durham for \$20,672.86; and

To authorize the City Manager to make changes as may be needed as long as they do not increase the dollar amount of the contract nor alter the completion date of the contract was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

**SUBJECT: WORKFORCE INVESTMENT ACT YOUTH SERVICES CONTRACT
WITH TRAINING FOR SUCCESS**

To authorize the City Manager to execute a contract with Training for Success in the amount of \$46,733.50; and

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To authorize the City Manager to make changes as may be needed as long as they do not increase the dollar amount of the contract nor alter the completion date of the contract.

Note: This item was referred back to the administration – Economic Development.

SUBJECT: THIRD AMENDMENT TO THE WORKFORCE INVESTMENT ACT CONTRACT WITH GENERAL MANAGEMENT SOLUTIONS, INC. FOR ADULT AND DISLOCATED WORKER PROGRAM FOR HURRICANE KATRINA PROJECT

To authorize the City Manager to execute the Third Amendment to the Workforce Investment Act contract with General Management Solutions, Inc., extending the contract deadline from August 30, 2006 to September 30, 2006, and

To increase the contract amount by \$21,500.00 for a total amount of \$500,727.00; and

To authorize the City Manager to make changes as may be needed as long as they do not increase the dollar amount of the contract nor alter the completion date of the contract

Note: This item was approved at the September 21, 2006 Work Session with a vote 7/0.

SUBJECT: AMENDMENT TO THE CITY OF DURHAM EMPLOYMENT AND TRAINING 2005-2007 GRANT PROJECT ORDINANCE #13301

To authorize the City Manager to accept the City of Durham, North Carolina and the State of North Carolina 'Employment and Training' Grant by executing the grant documents; and

To adopt the City of Durham, North Carolina and the State of North Carolina Employment and Training Grant Project Ordinance FY 2005-2007, superseding Grant Project Ordinance #13301 for the amount of \$1,809,608.00.

Note: This item was approved at the September 21, 2006 Work Session with a vote 7/0. Ordinance #13314

SUBJECT: CONTRACT AMENDMENT TO INCREASE THE LIVEABLE WAGE RATE FOR CUSTODIAL SERVICES AT DURHAM POLICE DEPARTMENT HEADQUARTERS FACILITY - NORTH CAROLINA SERVICE COMPANY, INC.

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MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to amend North Carolina Service Company, Inc.'s contract to increase the Liveable Wage rate from \$9.51 per hour to \$10.10 per hour;

To authorize the City Manager to increase the contract amount from \$140,873.76 to \$144,740.52, in which the monthly rate from July 1 through December 31, 2006 will change from \$5,869.74 to \$6,514.20; and

To authorize the City Manager to modify the agreement before execution provided the modifications do not increase the dollar amount of the agreement, and the modifications are consistent with the general intent of the existing version was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: NORTH GARAGE PARKING LEASE AGREEMENTS - AMERICAN CAMPUS, LLC

To authorize the City Manager to advertise for upset bids in accordance with G.S. 160A-269 for parking garage space leases as described herein;

If no upset bids are received, to authorize the City Manager to accept the offer by American Campus, LLC to lease 244 parking spaces for a period of ten years with automatic renewals for two additional five (5) year terms at the rate established by City Council, which is currently \$45.00 per month per parking space, minus the economic incentive amount of \$17.00 per month per parking space;

If no upset bids are received, to authorize the City Manager to accept the offer by Duke Corporate Education to lease 60 parking spaces for a period of ten years with an automatic renewal for one additional ten (10) year term at the rate established by City Council, which is currently \$45.00 per month per parking space, minus the economic incentive amount of \$17.00 per month per parking space; and

To authorize the City Manager to execute the Lease Agreements and make changes to the agreements prior to execution provided such changes do not change the intent of the lease agreements.

Note: This item was referred back to the administration – General Services.

SUBJECT: CONTRACT AMENDMENT FOR CONTRACT WS-79, WATER AND SEWER UTILITY IMPROVEMENTS - BILLINGS AND GARRETT, INCORPORATED

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MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to amend Contract WS-79 Water and Sewer Utility Improvements with Billings and Garrett, Incorporated by \$230,000.00 to construct two new sewer projects;

To authorize the expenditure from the Sewer Extensions and Improvements Account; and

To amend the existing contingency fund by an amount of \$35,000.00;

To authorize the City Manager to negotiate change orders for Contract WS-79 provided that the cost of all change orders does not exceed \$265,000.00 and the total project cost does not exceed \$1,442,000.00 was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: AGREEMENT WITH METHANE CREDIT, LLC FOR LANDFILL GAS UTILIZATION COOPERATION AND ROYALTY

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute the Landfill Gas Utilization Cooperation and Royalty Agreement with Methane Credit, LLC; and

To authorize the City Manager to modify the contract before execution provided the modifications are consistent with the general intent of the version of the contract was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: DURHAM HOUSING AUTHORITY

To receive a presentation on the State of Durham Housing Authority.

Note: Presentation was received at the September 21, 2006 Work Session.

SUBJECT: 2005 BOND PROJECT IMPLEMENTATION UPDATE

To receive a presentation on the Implementation Timeline for the 2005 Bond Projects and other funded projects.

Note: This item was deferred to the October 5, 2006 Work Session.

SUBJECT: RENAISSANCE ECONOMIC AND RE-INVESTMENT, INC.

To receive comments from Alvis Aikens regarding the Master Plan for District One.

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Note: Citizen did not appear at September 21, 2006 Work Session.

SUBJECT: LOVE AND RESPECT TRANSITIONAL HOUSE

To receive comments from Dennis Garrett, Sr. regarding an update as to the impact made upon District One.

Note: Citizen did not appear at September 21, 2006 Work Session.

SUBJECT: THEODORE BRYANT

To receive comments from Theodore Bryant concerning the regulations set forth by management of ACCESS that's a disadvantage to the blind and vision impaired.

Note: Comments were received at the September 21, 2006 Work Session.

SUBJECT: DURHAM OPERATION PIPE DREAM

To receive comments from Melvin Whitley regarding drug paraphernalia.

Note: Comments were received at the September 21, 2006 Work Session.

SUBJECT: PARTNERSHIP FOR WORKING TOWARD INCLUSIVE COMMUNITIES

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City of Durham's participation in the National League of Cities' Working Toward Inclusive Communities Initiative was approved at 8:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

[GENERAL BUSINESS AGENDA]

SUBJECT: DURHAM PERFORMING ARTS CENTER CONTRACT – NORTH CAROLINA RAILROAD COMPANY, SKANSKA USA BUILDING, INC. PHILIP SZOSTAK ASSOCIATES

To authorize the City Manager to execute the Offer to Purchase and Contract between City of Durham, as Buyer, and North Carolina Railroad Company, as Seller;

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To authorize the City Manager to execute all necessary legal documents consistent with the approved terms and to approve the purchase of property from the North Carolina Railroad;

To authorize the City Manager to execute a Construction Manager at Risk agreement with Skanska USA Building, Inc., as long as the Guaranteed Maximum Price does not exceed \$34,396,867.00;

To authorize the City Manager to execute a Naming Rights agreement for the Performing Arts Center Plaza between the City and the Plaza naming rights entity;

To authorize the City Manager to execute an amendment to the Philip Szostak Associates Professional Services Contract for the Durham Performing Arts Center;

To authorize the City Manager to execute Amendment #2 to Professional Environmental Services Contract for the Durham Performing Arts Center; and

To authorize the City Manager to make changes to the contracts prior to execution provided the changes do not increase the compensation to be paid by the City and do not decrease the services to be provided to the City.

Alan DeLisle, Assistant City Manager for Economic Workforce Development, noted this item was presented to the Theatre Subcommittee who voted 4/0 to recommend this item to the full Council. He noted staff is requesting four items to be considered for tonight: 1) Approval of Construction Manager at Risk contract subject to guaranteed maximum price coming in at our target not to exceed a total budget cost of \$44 million; 2) the approval of agreement with the Railroad Company; 3) Amendments to contracts with Philip Szostak Associates and 4) the Environmental firm related to the project.

Libby Barnes, of the Greater Durham Chamber of Commerce, made comments in support of the Performing Arts Center and thanked staff for their work on this project. She noted the Performing Arts Center will be a real asset to this community by helping to continue to do the work that will help improve the quality of life for all in the community.

Bill Kalkhof, of Downtown Durham, Inc., urged Council to approve this item so that the final pieces of the Performing Arts Theatre can continue and acknowledged the hard work of Council, the City Manager and the administration.

Victoria Peterson noted a committee should be established to make sure these companies are hiring local citizens or a policy established to address this issue.

Council Member Stith asked staff to address the economic impact for Durham and Downtown Fund.

Assistant City Manager for Economic Workforce Development Alan DeLisle noted a lot of the economic impact is related to outsiders –crews that come in and work on the shows, production faculty who will be staying in hotels, restaurants and patrons outside of community. He made

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comments on the Convention and Visitors Bureau study that highlighted a half million dollars in sales tax revenue will come to the City and County and the estimated property tax return on the DATA site alone would be projected at \$200,000.

Finance Director Ken Pennoyer noted staff updated the numbers for the Downtown Fund concerning the cash flow on the basis of the American Tobacco development. He reported originally, it was determined that staff would use the minimum development that was guaranteed in the American Tobacco agreement in order to project revenues. Now, additional phases of the American Tobacco are going to be coming on line so staff took that into consideration which created some additional cash flow for the Downtown Fund and that additional cash flow is what is being pledged either as a guaranteed or directly for the theater project which will drawdown the fund to a point where it reaches a minimum balance of \$130,000 in 45 years before it starts increasing again as the incentives from the American Tobacco start to burn off and staff receives additional property tax revenue from the completed construction of the American Tobacco development. He informed Council that there is sufficient cash flow in the fund to support the financing plans as they are currently.

Council Member Stith noted his concern is that the three major projects are not undermined.

Finance Director Ken Pennoyer noted the funds that are pledged for the other projects remain untouched in order to make this contribution to the theater project which also includes the Parrish Street allocation of \$200,000 a year which will be held separate and not effected by this item.

Council Member Stith asked staff to discuss the issue of minority participation/contractors.

General Services Director Mark Greenspan addressed the issue of local participation by discussing how the City would utilize the construction manager at risk procurement model approach. He noted the construction manager would manage the bidding, pre-construction and thorough constructability review to decrease the chances of construction risks.

EO/EA Director Deborah Giles made comments on the issue of SDBE's, the meeting with the construction manager and noted they have agreed upon a plan that will enhance the participation, 30 firms have been pre-qualified, and goals of the project and the process are in place.

Council Member Woodard made comments on the letter from County Manager Mike Ruffin dated September 28, 2006 to the City Manager confirming the County's support of the Performing Arts Theatre. He asked for clarification from staff on the following points: 1) revenues from proposed East deck theatre that the County is agreeing to commit revenues of approximately \$50,000 per year to the project from revenues that the County would receive; 2) if negotiations with the donor failed to result in revenues being able to fill gap the County would be amendable to the City returning and asking for additional East Deck theater revenue up to \$150,000 per year.

Assistant City Manager for Economic and Workforce Development Alan DeLisle noted part A deals with the number of parking spaces in the East Deck that under the original American

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Tobacco agreement would allow the City to receive after hour revenues of 215 spaces. Based on the way the original agreement was crafted, 110 are not in question and on the 105-- the City would receive the revenues for after hour parking on the 105. He noted the County was asked if they agree with that position and they noted initially they were not sure. He highlighted that the letter from the County Manager indicating the County has agreed to the City's position on the 105 which relates to the revenue for theater parking for those 215 spaces which equates to \$100,000 that is in the budget as a revenue stream to pay debt service from that parking revenue. Also, the City recommended that \$40,000 be used from the Downtown Fund in case the revenues come up short. He stated the second item deals with the County's agreement that the County is willing to consider the City coming back to them for additional revenue to help close the \$2 million gap and staff will report back to Council with a recommendation on that issue in the future.

Mark Greenspan discussed the guaranteed maximum price process and the next step after opening bid packages.

Council Member Catotti made comments in support of this item.

Council Member Clement made comments on the cap of \$44 million and the cost overruns.

General Services Manager Mark Greenspan informed Council that the City is in no obligation to move forward with construction if bids received are over the project budget and staff would report back to Council. He made comments on the pre-construction efforts in identifying risks and construction contingency to deal with unforeseen conditions that may occur during the construction process.

Council Member Clement asked EO/EA Director Deborah Giles if she had adequate staffing to monitor the minority participation of this program.

EO/EA Director Deborah Giles replied she has sufficient staff to monitor this project. She stated the uncertainty will occur on the volume of projects that come out and on what time line for the overall bond projects and at that point there could be a problem with staffing.

Mayor Pro Tempore Cole-McFadden asked staff will there be on-site monitoring for this project.

EO/EA Director Deborah Giles replied there will be some on-site monitoring.

Director of General Services Mark Greenspan replied that there would be a full-time City staff member on-site during the construction phase of this project monitoring the presence of subs and contractors. Under the North Carolina General Statutes, he reported the project is 100% bonded for performance and payment bond.

Discussion was held on the involvement by EBOP Committee.

EO/EA Director Deborah Giles informed Council that there will be no bonding requirement on scopes of work up to \$300,000.

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Director of General Services Mark Greenspan noted there would be a 5% retainage on this project.

Mayor Pro Tempore Cole-McFadden noted she wanted to make sure that small businesses get paid promptly if they have performed well.

A representative from Skanska USA noted if the work is satisfactorily completed and Mr. Greenspan is willing to reduce retainage on that particular package, they would be willing to reduce the retainage as well.

Council Member Brown noted the following three pieces need to come to together: 1) negotiations from the naming rights; 2) final cost -- not to exceed \$44 million; and 3) negotiations and donations from Duke University.

Assistant City Manager for Economic Workforce Development Alan DeLisle summarized four issues that Council is addressing this evening. He noted staff is asking Council 1) to approve the construction manager @ risk agreement subject to the guaranteed maximum price; 2) to approve the railroad agreement regarding Vivian Street; 3) to approve amendment to the Phillip Szostak Associates contract and an amendment to the environmental services contract. He noted staff will report back to Council by the end of this month with the naming rights agreement on the plaza.

Mayor Bell referenced Section 7.1.8 of the Contract -- retainage not less which is not completed and asked staff to provide the additional wording. The Mayor noted he is not clear on the bonding process for this project and asked if CMAR will require subcontractors to submit a bond.

Mr. Jones noted subcontractors that work for them, with the exception of the range mentioned by Deborah Giles, will be required to be bonded on the job. Also, he made comments on the standardized bond program that Skanzka will manage through a bonding company highlighting that all subcontractors are enrolled in the subguard program for this project would have the same rate of 1.25 percent.

General Services Director Mark Greenspan reported if the material impacted the operating budget or aesthetics of the program in any way or changed the approvals received to-date, this item would come back to Council.

Mayor Bell asked staff to bring changes to Council before moving forward.

For clarification on the motion, Alan DeLisle stated staff is not asking Council to approve the naming rights contract tonight.

Council Member Clement requested that Council receive timely updates on all matters.

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MOTION by Council Member Catotti seconded by Council Member Woodard to authorize the City Manager to execute the Offer to Purchase and Contract between City of Durham, as Buyer, and North Carolina Railroad Company, as Seller;

To authorize the City Manager to execute all necessary legal documents consistent with the approved terms and to approve the purchase of property from the North Carolina Railroad;

To authorize the City Manager to execute a Construction Manager at Risk agreement with Skanska USA Building, Inc., as long as the Guaranteed Maximum Price does not exceed \$34,396,867.00;

To authorize the City Manager to execute an amendment to the Philip Szostak Associates Professional Services Contract for the Durham Performing Arts Center;

To authorize the City Manager to execute Amendment #2 to Professional Environmental Services Contract for the Durham Performing Arts Center; and

To authorize the City Manager to make changes to the contracts prior to execution provided the changes do not increase the compensation to be paid by the City and do not decrease the services to be provided to the City was approved at 9:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: CONSTRUCTION MANAGEMENT AT RISK CONTRACTS - SKANSKA USA BUILDING, INC., HEERY INTERNATIONAL, INC., CENTEX CONSTRUCTION LLC, AND BARNHILL CONTRACTING COMPANY

To authorize the City Manager to negotiate and execute the agreements with Skanska USA Building, Inc., Heery International, Inc., Centex Construction LLC, and Barnhill Contracting Company for preconstruction services provided the fees to be paid for these services for any single project does not exceed five percent (5%) of the total budget for construction for that project, and the total amount of each contract does not exceed the amounts listed in the Portfolio Summary; and

To authorize the City Manager to make changes to the agreements so long as those changes are consistent with the intent of this memo.

Director of General Services Mark Greenspan noted he was present to answer questions or provide a brief overview of the issues.

Council Member Stith expressed concern about cost escalations for these projects and asked his colleagues to entertain a motion that these items come back to Council before and after the GMP due to the number of bonded projects.

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Director of General Services Mark Greenspan made comments on project delivery, number of bond projects and construction market. He noted the use of construction management at risk is ideally situated to deal with this problem and would allow the City to control the cost. He noted the City does not have the staff to manage the number of projects, outlined the benefit of construction management at risk and discussed the process.

Discussion was held on timing of contracts, contract pricing and phasing project.

Council Member Stith noted he would be amending the motion to include at the GMP stage this item will come back to Council for final approval.

Mayor Pro Tempore Cole-McFadden made comments on staff report: EO/EA's review of each firm's past performance on previous public/private projects.

Director of EO/EA Deborah Giles noted her department did not do a track record review for these companies as outlined in the staff report. She informed Council that a review was done by Liz Mills from Charlotte and made comments on the information in the SDBE summary that was submitted by her office.

Mayor Pro Tempore Cole-McFadden expressed concern about using outside firms to do work that staff could perform.

Deputy City Manager Wanda Page reported the contract with Ms. Mills' firm was prior to the discussion about her continued participation in the process and it was during the request for qualification process and examination of the history of organizations that the City is proposing.

Mayor Pro Tempore Cole-McFadden expressed concern with the statement in the staff report. Construction phase --- unusual circumstances the subcontractors will perform construction work.

Regarding unusual circumstances, Mark Greenspan, Director of General Services, made comments on the provision in the North Carolina general statutes.

Mayor Pro Tempore Cole-McFadden requested that this item be held until Thursday's work session to receive a written statement by EO/EA and the document that Ms. Mills prepared that shows the performance of previous public and private projects.

Council held discussion on deferring this item and the discrepancy in the staff report noted by Ms. Giles.

Council Member Catotti asked staff if each firms' past performance had been reviewed.

Director of General Services Mark Greenspan replied yes.

Director of EO/EA Deborah Giles noted EO/EA did not do the review that is suggested in the document. She stated there was a review of these firms conducted by Ms. Mills, but cannot speak to the adequacy of review.

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Relative to contractors recommended, Mayor Bell asked staff about the track record-- how many CMAR projects have they completed, price of contracts they have undertaken, how many have come in under the GMP, under-schedule and not met the schedule.

Mayor Bell expressed concern why it would take five quarters to complete the design for Walltown Recreation Center and with the project schedule.

Victoria Peterson raised concern with \$35 million going to four companies that do not reside in Durham and recommended that EO/EA receive two additional employees.

Council Member Catotti asked staff to provide information on concern raised by Council Member Stith.

City Manager Baker made comments on the length of time it takes to move projects forward.

Council Member Woodard noted 52% of projects are ready to go in the pipeline and would like to expedite this issue in order to move projects forward.

Council Member Brown made comments on the issue of being fair when selecting a contractor.

Mayor Bell made comments on the schedule.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to refer this item to the October 5, 2006 City Council Work Session was approved at 10:20 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Mayor Bell asked staff to provide all Council Members with a copy of the schedule.

SUBJECT: MASTER AGREEMENTS FOR TRANSPORTATION ENGINEERING AND PLANNING SERVICES -EARTH TECHNICAL; HNTB; KIMLEY-HORN AND ASSOCIATES, INC.; LOUIS BERGER GROUP, INC.; MARTIN/ALEXIOU/BRYSON, PLLC; PARSONS BRINCKERHOFF QUADE & DOUGLAS, INC.

Transportation Manager Mark Ahrendsen noted Council was provided with a memo to address concerns that were raised at the Work Session.

Mayor Pro Tempore Cole-McFadden asked staff what has been the track record of these firms.

Transportation Manager Mark Ahrendsen noted three of these firms are among the six that were recommended. He noted that Kimley-Horn & Associates, Martin/Alexiou/Bryson and Parsons Brinckerhoff Quade & Douglas, Inc. have been used in the past and they have used qualified

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SDBES for subcontracting opportunities on various assignments they have been engaged in and the other three firms are new and the City does not have a track record with them.

Mayor Pro Tempore Cole-McFadden expressed concern about the diversity of contractors not improving in certain areas.

MOTION by Council Member Catotti seconded by Council Member Brown to authorize the City Manager to execute Master Agreements for Transportation Engineering and Planning Services with the following firms: (a) Earth Technical; (b) HNTB; (c) Kimley-Horn and Associates, Inc.; (d) Louis Berger Group, Inc.; (e) Martin/Alexiou/Bryson, PLLC; (f) Parsons Brinckerhoff Quade & Douglas, Inc.; and

To authorize the City Manager to modify the aforementioned master agreements before execution provided that the modifications do not increase the dollar amount of the agreements and the modifications are consistent with the general intent of the existing version of the agreements was approved at 10:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

SUBJECT: VOLUNTARY ANNEXATION PETITIONS RECEIVED BY APRIL 1, 2006

Julie Brenman, Assistant City Manager for Budget and Strategic, noted the cost benefit analysis for each property shows a net gain to the City under both current and requested rezoning. She stated Simko Property includes a small piece of Wake County and all neighboring governments have been notified with no concerns expressed.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, Mayor Bell closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments concerning the annexation of the following Voluntary Annexation Areas was approved at 10:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

a) FY2006-13 Cameron Grove

MOTION by Council Member Stith seconded by Council Member Catotti to adopt “An Ordinance Annexing to the City of Durham” the Voluntary Annexation Area [Cameron Grove] in accordance with N.C. General Statutes 160A-58 effective from and after December 31, 2006; and

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To authorize the City Manager to modify an existing half-base contract with the Bahama VFD to provide supplemental fire protection services over a five-year period for the Voluntary Annexation Area, under the same terms and conditions as services are provided to other areas in such contracts was approved at 10:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13321

b) FY2006-14 Southampton

MOTION by Council Member Stith seconded by Council Member Catotti to adopt “An Ordinance Annexing to the City of Durham” the Voluntary Annexation Area [Southampton] in accordance with N.C. General Statutes 160A-58 effective from and after December 31, 2006; and

To authorize the City Manager to modify an existing half-base contract with the Parkwood VFD to provide supplemental fire protection services over a five-year period for the Voluntary Annexation Area, under the same terms and conditions as services are provided to other areas in such contracts was approved at 10:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13319

c) FY2006-15 Simko Property

MOTION by Council Member Stith seconded by Council Member Catotti to adopt “An Ordinance Annexing to the City of Durham” the Voluntary Annexation Area [Simko Property] in accordance with N.C. General Statutes 160A-58 effective from and after December 31, 2006; and

To authorize the City Manager to pay the debt service of the Bethesda Volunteer Fire Department was approved at 10:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13320

SUBJECT: INSTALLMENT PURCHASE FINANCING SERIES 2006 – NEW DURHAM CORPORATION

Finance Director Ken Pennoyer noted this public hearing is for the approval of a resolution for the Series 2006 COPS: 1) \$32,000 million Durham Performing Arts Center; 2) \$575,000 for equipment including \$290,000 self-contained breathing apparatus for Fire Department and

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revenue of \$285,000 for vehicle replacements and 3) refunding \$6.6 million of the 2001 COPS. He made comments on the approval process and interest rates.

Mayor Bell opened the public hearing. There being no one to speak in support or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments concerning the contract, the deed of trust and other related documents for a principal amount not to exceed \$49,000,000.00 and the refinancing of the 2001 projects for a principal amount not to exceed \$8,000,000.00 and;

To adopt a resolution approving the installment purchase contract with New Durham Corporation and related matters was approved at 10:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9399

SUBJECT: PLAN AMENDMENT (A06-12) —FOSTER/WEST GEER – ROBERT L. CHAPMAN, TRADITIONAL NEIGHBORHOOD PARTNERS, LLC

To receive public comments on the Foster/West Geer (A06-12) Plan Amendment; and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Medium Density Residential (6-12 DU/Ac.) and Urban Tier to Commercial and Downtown Tier.

Staff Recommendation: Approval, based on the request being justified and meeting the four criteria for plan amendments.

Planning Commission Recommendation: Approval, 13-0

City/County Planning Director Frank Duke briefed Council on the plan amendment.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the Foster/West Geer (A06-12) Plan Amendment; and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Medium Density Residential (6-12 DU/Ac.) and Urban Tier to Commercial and Downtown Tier was approved at 10:33 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

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Resolution #9401

SUBJECT: PLAN AMENDMENT (A06-04) — COOK ROAD TOWNHOMES – MIKE DEHGAN, D EIGHT CORPORATION – EAST SIDE OF COOK ROAD, SOUTH OF MARTIN LUTHER KING, JR. PARKWAY AND NORTH OF BROWN STREET

To receive public comments on Cook Road Townhomes (A06-04); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Low Density Residential (4 DU/Ac. or less) to Low-Medium Density Residential (4-8 DU/Ac.)

Staff Recommendation: Approval, based on the request being justified and meeting the criteria for plan amendments.

Planning Commission Recommendation: Approval, 8-5, based on compatibility with nearby densities.

City/County Planning Director Frank Duke briefed Council on the plan amendment.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on Cook Road Townhomes (A06-04); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Low Density Residential (4 DU/Ac. or less) to Low-Medium Density Residential (4-8 DU/Ac.) was approved at 10:36 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9400

SUBJECT: ZONING MAP CHANGE (Z06-04) – ELLINGTON PLACE – NEIGHBORHOOD DEVELOPMENT GROUP, LLC – EAST AND WEST SIDES OF SOUTH MINERAL SPRINGS ROAD, SOUTH OF PLEASANT DRIVE AND NORTH OF DELMAR DRIVE

To receive public comment on the zoning map change for the Ellington Place (Z06-04);

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To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z06-04 out of RR and RS-20 and placing same in and establishing same as PDR 4.760; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Planning Staff Recommendation: Staff recommends approval, based on the consistency with the Comprehensive Plan and the information contained within the staff report.

Planning Commission Recommendation and Vote: Approval, 12-1, on August 8, 2006 based on finding that the ordinance request is consistent with the adopted Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on the information in the staff report, comments received during the public hearing and additional committed elements proffered by the applicant at the meeting.

[The site is located on the East and west sides of South Mineral Springs Road, south of Pleasant Drive and north of Delmar Drive. PINs 0840-02-76-8746; -85-2593, -4214, -5214, -5522, -6541, -7571; -86-4139; -96-1043, -5058, -8103; 0850-01-05-6804]

City/County Planning Director Frank Duke briefed Council on the staff report and noted there is a development plan associated with this request. Mr. Duke highlighted committed elements on page 3 of staff report—dedication of 100' greenway easement, road improvements, usable open space in the form of a tot lot to be equipped with swings, play apparatus and benches, installation of 50' buffer, no zero lot line homes, erosion control devices greater than ordinance requirement, and a provision of \$500 per dwelling unit donation to Durham Public Schools at the time of building permits. He noted this request is consistent with the Comprehensive Plan, staff and the Planning Commission recommended approval. Mr. Duke stated staff has required certifications under North Carolina law that all advertising was complied with for this request and all cases listed on the agenda for tonight.

Mayor Bell opened the public hearing.

Proponents

Attorney Kenneth Spaulding, representing the applicant, spoke in support of this zoning map change. He made comments on the use—90 townhomes and 140 single family homes, road infrastructure and school capacity, neighborhood meetings and urged Council to support this request.

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Thomas Beech, of Forest View Road, noted when he first heard of this development he had a lot of reservations and after meeting with the applicant he supports this project.

No one spoke in opposition to this zoning map change.

Mayor Bell closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comment on the zoning map change for the Ellington Place (Z06-04);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z06-04 out of RR and RS-20 and placing same in and establishing same as PDR 4.760; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 10:43 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13322

SUBJECT: ZONING MAP CHANGE (Z05-43) - GREENFIELD – NEIGHBORHOOD DEVELOPMENT PARTNERS, LLC – NORTH SIDE OF SHERRON ROAD, EAST OF KAREN DRIVE AND WEST OF SCHEER AVENUE

To receive public comments on the zoning map change for Greenfield (Z05-43);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z05-43 out of RS-20 and RR and placing same in and establishing same as PDR 6.070; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

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Planning Department Recommendation: Approval, based on consistency with the Comprehensive Plan, should the plan amendment be adopted, and considering the information contained in this report.

Planning Commission Recommendation and Vote: Approval, 10-3 on August 8, 2006. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on the information in the staff report, comments received during the public hearing and additional committed elements proffered by the applicant at the meeting.

[The site is located on the north side of Sherron Road, east of Karen Drive and west of Scheer Avenue. PIN: 0850-03-13-9709]

City/County Planning Director Frank Duke briefed Council on the staff report and noted there is a development plan associated with this request. Mr. Duke highlighted committed elements on page 2 of staff report to include a buffer and open space greater than ordinance requirement, equipment for useable open space, unpaved trail, a provision for sedimentation and erosion control greater than ordinance requirements, road improvements and \$500 per dwelling unit as a voluntary contribution to Durham Public Schools at the time of site plan. He noted this request is consistent with the Comprehensive Plan, Planning Department and Planning Commission recommended approval.

Mayor Bell opened the public hearing.

Proponent

Attorney Kenneth Spaulding representing the applicant, spoke in support of this item. He noted this request is consistent with Comprehensive Plan, made comments on road capacity and urged Council to approve this request.

No one spoke in opposition to this zoning map change.

Mayor Bell closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the zoning map change for Greenfield (Z05-43);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z05-43 out of RS-20 and RR and placing same in and establishing same as PDR 6.070; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 10:45 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore

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Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13323

**SUBJECT: STREET CLOSING (SC06-07) – COMMUNITY BUILDERS, INC. -
SOUTH GOLEY STREET, NORTH OF ANGIER AVENUE AND SOUTH
OF EAST MAIN STREET**

To receive public comments on the closing of a 396.38 linear foot portion of South Goley Street, north of Angier Avenue and south of East Main Street; and

To adopt an Order permanently closing a 396.38 linear foot portion of South Goley Street, north of Angier Avenue and south of East Main Street, conditioned on the recombination of lots and dedication of right-of-way or easements for such property deemed sufficient by the City.

City/County Planning Director Frank Duke briefed Council on the street closing noting no impacts have been identified by any service providers.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the closing of a 396.38 linear foot portion of South Goley Street, north of Angier Avenue and south of East Main Street; and

To adopt an Order permanently closing a 396.38 linear foot portion of South Goley Street, north of Angier Avenue and south of East Main Street, conditioned on the recombination of lots and dedication of right-of-way or easements for such property deemed sufficient by the City was approved at 10:49 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13317

**SUBJECT: STREET CLOSING – A 253.01 LINEAR FOOT PORTION OF
WALSENBURG DRIVE, EAST OF WILLOW DRIVE, WEST OF
VIVALDI DRIVE AND SOUTH OF LAKEVIEW ROAD (SC06-01)**

To receive public comments on the closing of a 253.01 linear foot portion of Walsenburg Drive, east of Willow Drive, west of Vivaldi Drive and south of Lakeview Road; and

To adopt an Order permanently closing a 253.01 linear foot portion of Walsenburg Drive, east of Willow Drive, west of Vivaldi Drive and south of Lakeview Road, conditioned on the

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recombination of lots and dedication of right-of-way or easements for such property deemed sufficient by the City.

City/County Planning Director Frank Duke briefed Council on the street closing. He noted street closing is consistent with a previous approved development plan for Madison Glen II and is a condition of the effective date of that development plan and no impacts have been identified by any service providers.

Mayor Bell opened the public hearing. There being no one in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the closing of a 253.01 linear foot portion of Walsenburg Drive, east of Willow Drive, west of Vivaldi Drive and south of Lakeview Road; and

To adopt an Order permanently closing a 253.01 linear foot portion of Walsenburg Drive, east of Willow Drive, west of Vivaldi Drive and south of Lakeview Road, conditioned on the recombination of lots and dedication of right-of-way or easements for such property deemed sufficient by the City was approved at 10:50 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13318

[ITEM PULLED FROM CONSENT AGENDA]

SUBJECT: AMENDMENT TO THE CITY OF DURHAM EMPLOYMENT AND TRAINING 2006-2008 GRANT PROJECT ORDINANCE #13273

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manager to accept the City of Durham North Carolina and the State of North Carolina "Employment and Training" Grant by executing the grant documents; and

To adopt the City of Durham North Carolina and the State of North Carolina 'Employment and Training' Grant Project Ordinance FY 2006-2008, superseding Grant Project Ordinance #13273 for the amount of \$1,823,843.00 was approved at 10:50 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13316

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There being no further business to come before the City Council, the meeting was adjourned at 10:51 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk